IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2501 of 2003

with

CIVIL APPLICATION No 1769 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROSARIO MARIA GARCIA GONZALEZ THRO'P.O.A. ASHABEN T SHAH
Versus
SECRETARY

Appearance:
1. First Appeal No. 2501 of 2003
M/S THAKKAR ASSOC. for Petitioner No. 1
MR PARTHIV B SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 1
MR DIPEN DESAI, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 15/03/2004

ORAL JUDGEMENT

This appeal under Section 47-A of the Guardians and Wards Act, 1890 is directed against the judgement and order dated 19.8.2003 passed by the Learned Joint District Judge, Rajkot in Civil Misc. Application No. 106 of 2002. The prayer made in the said application was as follows:-

> "A. That the applicant M/S Rosario Maria Garcia Gonzalez residing at Urbanizcion el Jardines 2, Casa - 5, Espartinas, (Seville) - 41807 SPAIN be appointed as the guardian of the person of the ward Sarita born on 24.7.2000 and the permission be granted to remove the said ward Sarita out of the jurisdiction of this Hon'ble court to their respective country SPAIN."

2. The appellant M/S Rosario Maria Garcia Gonzalez is a citizen of Spain. She was desirous of adopting an Indian child. She came to India and went to Kathiawar Nirashrit Balashram at Rajkot on 25.8.2003 and stayed there with an abandoned child named Sarita upto 20.9.2003. The said child was admitted to the Balashram on 26.4.2000. The appellant decided to adopt the said child. She, therefore, filed the aforesaid Civil Application, through her power of attorney holder Ashaben T Shah, Superintendent of Kathiawar Nirashrit Balashram, under the provisions of the Guardians and Wards Act praying that she be appointed as guardian of the person of the minor abandoned child Sarita and that she be granted permission to remove the child out of the jurisdiction of the Court to Spain.

3. The appellant holds a Bachelor degree in Philosophy and Educational Sciences and is a teacher of General Basic Education.

4. Alongwith the said Misc. Civil Application, the following documents were produced in compliance with the directions issued by the Central Government to be followed in the case of an inter-country adoption:-

A-1. Home study report.
B-2. Photograph of Adoptive mother and her Regarding home.
C-3. Regarding Marriage.
D-4. Declaration of health of adoptive mother.
E-5. Medical Certificate of Applicant.
F-6 Declaration of financial status.

G-7. Employment Certificate cum Income Certificate.
H-8. Taxes Assessment Certificate.
I-9. Bank Reference.
J-10. Property Certificate.
K-11. Declaration of Willingness to be appointed as guardian.
L-12. Undertaking by Spanish Government and Agency for legalization.
M-13. Undertaking by Prospective Mother for up bringing and education of the minor.
N-14. Undertaking by Spanish Government & agency for follow up reports.
O-15. General power of Attorney.
P-16. Permission to adoption according to Country law.
Q-17. Undertaking by Spanish Government & Agency in the case of Disruption.
R-18. Undertaking by Mother for expenses.
19. Recommendation letter.
20. Medical Certificate of Sterility.
21. Passport Copies.
22. No conviction Certificate.
23. Entry permission for Minor from Spanish Government.
24. G.V.C.A. Certificate.
25. Approved child study with Medical report.
26. NOC from CARA, New Delhi.
27. Copy of License of Institution for inter-country adoption.
28. List of approved foreign agency.
29. Copy of Honourable Supreme Court's Judgement.

5. The notice of the application was issued to the Indian Council of Social Welfare, Gujarat State Branch, Ahmedabad, which is the scrutinising agency. An affidavit was filed on behalf of the said agency supporting the application made by the appellant.

6. Thus, it appears that all the guidelines issued by the Central Government in this behalf were fulfilled. However, the Learned Judge dismissed the application. The appellant has, therefore, filed this appeal challenging the said order dismissing her application.

7. As stated earlier, all the guidelines issued by the Central Government were duly complied with and the documents produced by the appellant show that she was fit to adopt the child and that her desire to adopt the child was sincere, bonafide and genuine. However, the learned Judge made some observations about her marital status and rejected the prayer stating that the appellant would not be able to provide stable and secure family life to the

child. In this context, we must appreciate that the norms and the mores are different in every society and it is not fair to judge people belonging to other societies by our standards. The appellant has today filed a Civil Application No. 1769 of 2004 praying for leave to produce additional evidence in the form of an affidavit. The said application is allowed and the affidavit with a letter dated 9.4.2003 addressed by the appellant is ordered to be taken on record. It is clear from the affidavit and her letter that the appellant is aware that the child is a minor child with hearing loss and that the child is suffering from minor Thalassaemia. She has stated in her letter that she is ready to do everything possible to give the child the best medical treatment alongwith her love and affection. The evidence on record shows that Indian parents are not available to adopt such a child. In the circumstances, I am satisfied that it will be in the interest of the child if she is given in adoption to the appellant.

8. The appeal is, therefore, allowed. The judgement and order dated 19.8.2003 passed by the Learned Joint District Judge, Rajkot District, Rajkot in Civil Misc. Application No.106 of 2002 is set aside and the matter is remanded to the District Court. The learned District Judge or the Judge to whom the matter is assigned by the District Judge, shall pass formal appropriate orders allowing the said Civil Misc. Application and granting the prayer as made by the appellant in the said application on usual terms and conditions without any delay. The R&P shall be sent back immediately. There shall be no order as to costs. Direct Service permitted.

(M.C.Patel, J)
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